

The Connecticut General Assembly

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TO:

FROM: Sandra Norman-Eady, Senior Attorney

RE: Self Defense

You asked for a summary of *St. v. Prioleau*, 235 Conn. 274 (1995).

SUMMARY

State v. Prioleau is the latest state Supreme Court decision on self-defense. The defendant in this case appealed to the Supreme Court from a conviction of murder, criminal possession of a firearm, and carrying a pistol without a permit. The defendant, who admitted shooting the victim, argued that the trial court improperly instructed the jury on self-defense, initial aggression, provocation, and intent. He also argued that the court erred when it allowed the state to (1) cross-examine him and present evidence concerning weapons found in his bedroom on the night of the shooting, (2) present rebuttal evidence regarding the weapons, and (3) engage in improper closing arguments.

The Supreme Court upheld the defendant's conviction. According to the Court, the trial court's failure to instruct the jury to use a subjective-objective test, instead of a purely subjective one, regarding the defendant's belief about the degree of force necessary to repel an alleged attack did not mislead the jury to an improper verdict. The jury, according to the Court, could have reasonably found that the evidence, the issues, and the charge when taken together showed that the defendant murdered the victim.

The court also held that:

1. the trial court's self-defense instruction, which did not specifically state that the first person to use physical force was not necessarily the initial aggressor, adequately informed the jury on the law;
2. the defendant could not prevail on his claim that the court improperly instructed the jury on provocation when he asked the court to offer the same instruction;

3. the trial court did not abuse its discretion when it allowed the state to cross-examine the defendant and present rebuttal evidence regarding weapons found in his bedroom on the night of the murder because the questions were relevant and the rebuttal was necessary to impeach the defendant's testimony on direct;
4. the trial court did not abuse its discretion in permitting the state to urge the jury to draw certain inferences during its closing argument because the inferences were reasonable and supported by the facts; and
5. the defendant could not prevail on his claim that the trial court improperly instructed the jury on specific intent because the jury instructions as a whole did not guide the jury to an improper verdict.

STATE V. PRIOLEAU, 235 CONN. 274 (1995)

Facts

During the trial the defendant testified that as a result of a series of events, he reasonably believed that he was in serious and imminent danger of death or bodily harm when he encountered the victim in a stairwell of the building where they both lived on the day of the shooting. As justification for his belief, the defendant testified that four days before the shooting the victim told him “you'll be dead before the end of the week.”

The defendant appealed the conviction arguing that the trial court improperly instructed the jury on his self-defense claim by (1) directing the jury to use a purely objective test, instead of a subjective-objective test, to determine whether his belief about the degree of force necessary to protect himself was reasonable and (2) failing to instruct the jury that the first person to use force is not necessarily the aggressor. He also argued that the court erred when it allowed the state to (1) cross-examine him and present evidence concerning weapons found in his bedroom on the night of the shooting, (2) present rebuttal evidence regarding the weapons, and (3) engage in improper closing arguments.

Law

A person is justified in using reasonable physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. The defender may use the degree of force he reasonably believes is necessary to defend himself or a third person, except deadly force cannot be used unless the actor reasonably believes that the attacker is using or about to use deadly physical force or inflicting or about to inflict great bodily harm.

Additionally, a person is not justified in using deadly physical force if he knows he can avoid doing so with complete safety by:

1. retreating, except from his home or office in cases where he was not the initial aggressor or except in cases where he is assisting a peace officer at the officer's directions;
2. surrendering possession to property the aggressor claims to own; or

3. obeying a demand that he not take an action he is not otherwise required to take.

Lastly, a person is not justified in using physical force when (1) with intent to cause physical injury or death to another person, he provokes the person to use physical force, (2) he is the initial aggressor, or (3) use of such force was the product of a combat by agreement not specifically authorized by law (CGS § 53a-19).

Analysis

The Court began its analysis by stating the rule with respect to jury instructions. Citing *St. v. Corchado*, 188 Conn. 653 (1982), the Court found that defendants have a constitutional right to proper jury instructions on the elements of self-defense so that the jury can ascertain whether the state met its burden of proving that the assault was not justified.

Standard of Proof In Self-Defense Cases. In order to succeed with a self-defense claim, a defendant must produce sufficient evidence that he believed he was in imminent danger and that the degree of force used was necessary for him to defend himself. The standard that must be applied to determine the first element of self-defense is the reasonable person standard. The standard applicable to the second is a subjective-objective one (i.e., the jury must view the action from the defendant's perspective and then determine if the defendant's belief was reasonable) (*State v. DeJesus*, 194 Conn. 376 (1984); *State v. Carter*, 232 Conn. 537 (1995)).

The defendant's first claim was that the trial court erred when it failed to instruct the jury to use a subjective-objective test when determining whether his belief that deadly force was necessary to repel an attack was reasonable. The Court found that the trial court's instructions failed to adequately inform the jury that it needed to examine and evaluate the defendant's subjective belief. Having made this finding, the issue before the Court was whether it was reasonably possible that the jury was misled to an improper verdict by the trial court's instructions (*State v. Ash*, 231 Conn. 484 (1994)). The test to be applied to any part of a charge is whether the charge, considered as a whole, presents the case to the jury so that no injustice will result (*State v. Roy*, 173 Conn. 35 (1977); *State v. Mullings*, 166 Conn. 268 (1974)).

The Court held that the jury was not misled because the critical issue at trial, as evidenced by the state's trial argument, was not whether the degree of force used by the defendant was reasonable but rather whether he, at the time he shot and killed the victim, reasonably believed that the victim was about to use deadly force or inflict great bodily harm. Thus, according to the Court, the trial court's imperfect instruction regarding the defendant's belief in the acceptable degree of force was harmless beyond a reasonable doubt.

Initial Aggressor in Self-Defense. The defendant's second claim was that the trial court erred when it did not specifically instruct the jury that the initial aggressor is not necessarily the first person to use physical force.

The Court found that although the trial court did not give that explicit instruction, the premise was implicit throughout the entire self-defense instruction (e.g., the court recited the self-defense statute and instructed the jury that the use of deadly force was justified if the defendant believed he needed to use it to protect himself from the use or impending use of such force by the victim).

The Court held that in light of the entire self-defense instruction, the trial court sufficiently apprised the jury that it could have found the defendant not guilty of murder on the ground of self-defense even if the defendant was the first person actually to have used physical force, so long as the defendant reasonably believed that the victim was about to use deadly physical force against him.

Provocation and Self-Defense. The Court declined to review the defendant's third claim that the trial court should not have instructed the jury on the issue of provocation because the defendant asked the court to issue the instruction.

Permissible Cross-examination Inquires. The defendant's fourth claim was that the trial court improperly permitted the state to (1) cross-examine him regarding weapons found in his bedroom on the night of the killing and (2) present evidence regarding the weapons during rebuttal.

It is settled law in Connecticut that inquiry upon cross-examination is limited by the scope of the evidence offered during direct examination (*State v. Schroff*, 198 Conn. 405 (1986)). The trial court, however, has wide discretion to determine the scope of cross-examination (*State v. Jackson*, 198 Conn. 314 (1986); *State v. Sharpe*, 195 Conn. 651 (1985)). A court's review on appeal is limited to whether the trial court's rulings exceeded the latitude accorded its discretion (*State v. Williamson*, 206 Conn. 685 (1988)).

The Court held that even though the defendant did not open the door on direct, his response to legitimate questions on direct (i.e., defendant testified that he did not own a gun before the victim threatened to kill him) allowed the state to delve into the circumstances surrounding his acquisition of other weapons.

Relevant Evidence. The defendant argued that evidence regarding the existence of the other weapons should have been inadmissible because it was not relevant to whether he lied on cross-examination regarding their acquisition. He argued that even if relevant, the evidence's probative value was outweighed by its potential prejudicial effect on the jury.

Evidence is relevant if it has a logical tendency to aid the trier in the determination of an issue (*Pitt v. Kent*, 149 Conn. 351 (1962)). One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable (*State v. Blake*, 69 Conn. 64 (1897)). Evidence is not rendered inadmissible because it is inconclusive. All that is required is that the evidence tend to support a relevant fact even to a slight degree, so long as it is not prejudicial or merely cumulative (*State v. Miller*, 202 Conn. 463 (1987)).

The Court held that the evidence was relevant because (1) the time span between the day the defendant claimed to have been without a weapon and the day he was found to have several was only six days and (2) the evidence regarding the weapons found in the defendant's bedroom on the night of the shooting tended to make it more probable than not that the defendant lied during cross-examination.

With respect to whether the evidence's probative value outweighed its prejudicial effect, the Court outlined the four situations where this could be true:

1. where the facts offered may unduly arouse the jury's emotions, hostility, or sympathy;

2. where the proof and answering evidence it provokes may create a side issue that will unduly distract the jury from the main issues;
3. where the evidence offered and the counter proof will consume an undue amount of time; and
4. where the defendant, having no reasonable ground to anticipate the evidence, is unfairly surprised and unprepared to meet it (*State v. Greene*, 209 Conn. 458 (1988)).

The Court held that only one of these situations existed in the case at bar (i.e., the first one); thus, the defendant's argument failed.

Rebuttal Testimony. The Court refused to review the defendant's claim that the trial court improperly permitted the state to offer rebuttal testimony regarding the weapons found in his bedroom at the time of the killing because the defendant failed to raise this objection at trial. Upon a review of the trial records, the Court found that the defendant objected to the evidence based only on relevancy. The rule in Connecticut is that a court's review of evidentiary rulings made by a trial court is limited to the specific legal ground raised in the objection (*State v. Sinclair*, 197 Conn. 574 (1985); *State v. Rothenberg*, 195 Conn. 253 (1985)).

Closing Arguments. The defendant argued that the trial court permitted the state to engage in improper closing arguments when the prosecutor was allowed to misrepresent the medical examiner's testimony and inject his own personal beliefs regarding the conclusions the jury should have reached.

The Court cited *State v. Kinsey*, 173 Conn. 344 (1977) for the rule in Connecticut regarding attorney statements. In *Kinsey*, the Court held that counsel may comment upon facts properly in evidence and upon *reasonable* inferences to be drawn from them. Applying this rule, the Court held that the inferences argued by the state were reasonable ones supported by the facts in evidence.

Jury Instructions on "Intent." The defendant's last claim was that the trial court improperly instructed the jury on the element of intent. In defining intent, the trial court read the statutory definition contained in CGS § 53a-3 (11) which contains references to both intent to cause a result and intent to engage in proscribed conduct.

The Court agreed with the defendant that the portion of the instruction dealing with intent to engage in proscribed conduct was irrelevant to a murder prosecution but held that the court's instructions as a whole did not mislead the jury to an improper verdict.

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